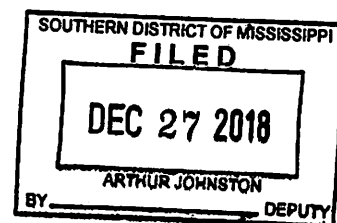


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION



DOUGLAS HANDSHOE

PLAINTIFF

VS.

CIVIL ACTION NO. 1:15cv382HSO-JCG

VAUGHN PERRET, CHARLES LEARY &  
DANIEL ABEL, D/B/A TROUT  
POINT LODGE LTD OF NOVA SCOTIA  
& IN THEIR INDIVIDUAL CAPACITIES  
PROGRESS MEDIA GROUP LIMITED,  
MARILYN SMULDERS, TORSTAR  
CORPORATION, NATIONAL  
GEOGRAPHIC SOCIETY, XYZ  
FOUNDATION & JOHN DOES 1-50

DEFENDANTS

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**REGARDING ECF 313: DEFENDANT CHARLES LEARY'S  
PRO SE MOTION TO APPEAR AT HEARING TELEPHONICALLY  
OR IN THE ALTERNATIVE TO RELY ON BRIEFS ONLY**

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COMES NOW Plaintiff by counterclaim **Charles Leary**, appearing *pro se*, and files this his Motion respectfully requesting that this Honorable Court allow him to appear at a Federal Rule of Evidence 201(e) hearing telephonically. That hearing was ordered by the Court on December 20, 2018 (ECF 313). Dr. Leary avers that he will be outside of North America on business on January 9, 2019, and he does not want to delay the Court. The expense of traveling to Mississippi in terms of lost work, time, airfare, and accommodation at this time is high and Dr. Leary believe it outweighs the value to the Court in appearing in person.

In the alternative, federal common law allows the Court to rely on briefs only and dispense with a formal hearing. "[I]n the absence of more explicit authority, we do not read the rule to require a court under all circumstances to hold a formal hearing every time a *proponent* of

judicial notice so demands.” *American Stores Co. v. Comm'r of Internal Revenue*, 170 F.3d 1267, 1271 (10th Cir.1999) (emphasis in original); accord: *Amadasu v. The Christ Hosp.*, 514 F.3d 504 (6th Cir. 2008); *Jonas v. Jonas*, No. CV 13-90-M-DWM (D. Mont. Mar. 12, 2014) (“no federal court has held that Federal Rule of Evidence 201(e) requires a formal hearing in all circumstances”). Notably, the U.S. Court of Appeals for the Fifth Circuit apparently agrees with the Tenth and Sixth Circuits; see *Ctr. for Biological Diversity v. BP AMERICA PROD.*, 704 F.3d 413 (5th Cir. 2013). There is no requirement for a formal hearing on a Motion to Strike. Dr. Leary is willing to have the Court rely on his written motions and briefs only in deciding the issues raised should the Court not grant a telephonic appearance.

RESPECTFULLY SUBMITTED, this the 21<sup>st</sup> day of December , 2018.



CHARLES LEARY, DEFENDANT

appearing *pro se*

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Canada

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**CERTIFICATE OF SERVICE**

I hereby certify that, on Dec 21<sup>st</sup>, 2018, I caused a true and correct copy of the above and foregoing to be filed utilizing the Court's CM/ECF electronic document filing system, which caused notice of such filing to be delivered to all counsel of record and parties requesting notice, and by United States First Class Mail, postage prepaid, to the following non-ECF participants having appeared in this action:

[none]



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Charles L. Leary